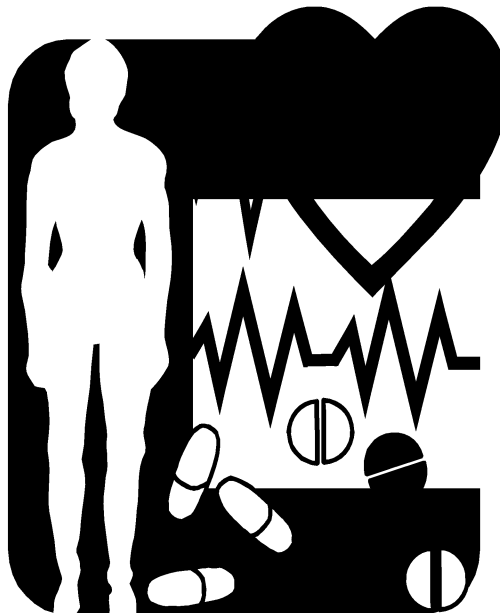


## **PART 382**

### **Alcohol and Drug Testing Requirements**



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#### **Applicability**

Drivers required to have a commercial driver's license (CDL) are subject to the controlled substance and alcohol testing rules. This requirement extends to those drivers currently covered by the rule, including interstate and intrastate truck and motor coach operations.

This includes all commercial motor vehicles operated by:

- For-hire and private companies
- Federal, state, local, and tribal governments
- Church and civic organizations
- Apiarian industries

#### **Exemptions**

- Drivers exempt from commercial driver's license requirements by their issuing State
- Active duty military personnel

#### **Types of Alcohol and Controlled Substance Tests**

**Pre-employment:** No employer shall allow a driver to perform a safety sensitive function until they have received the negative controlled substance test result.

**Post-accident:** As soon as practicable following an accident involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol and controlled substances of each surviving driver: Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or Who receives a citation under state or local law for a moving traffic violation arising from the accident, if the accident involved: Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

**Random:** Companies are to scientifically and randomly test drivers at a minimum annual percentage rate of 10% of the number of drivers for alcohol testing, and 50% for controlled substances testing. The random alcohol test must be performed prior, during or just after a driver is about to, or has performed a safety sensitive function as defined in Section 382.107. All drivers must have an equal chance of being selected.

**Reasonable suspicion:** An employer shall require a driver to submit to an alcohol and/or controlled substance test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions concerning alcohol and/or controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol and/or controlled substance test must be based on specific, contemporaneous, articulate observations concerning the appearance, behavior, speech or body odors of the driver. The required observations shall be made by a supervisor or company official who is trained in accordance with Section 382.603 (Supervisor Awareness Training).

**Return-to-duty:** Each employer shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part concerning alcohol or controlled substances, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 or the driver shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use.

**Follow-up:** If a substance abuse professional has determined that a driver needs assistance for the misuse of alcohol, or for use of a controlled substance, an employer must ensure that the driver is subject to follow-up testing. A minimum of six tests must be conducted in the first 12 months, and the driver may only be subject to this test for a maximum of 60 months.

### **Retention of Records**

#### **Five Years:**

- Alcohol test results indicating a Breath Alcohol Concentration (BAC) of 0.02 or greater
- Verified positive drug test results
- Refusals to submit to required alcohol and drug tests
- Required calibration of Evidential Breath Testing (EBT) devices

#### **Two Years:**

- Records related to the collection process and required training

#### **One Year:**

- Negative and canceled controlled substance test results
- Alcohol test results indicating a BAC of less than 0.02

### **Location of Records**

All required records shall be maintained in a secure location with limited access, and shall be made available for inspection by an authorized representative of the Federal Motor Carrier Safety Administration.

### **Driver Awareness**

Every motor carrier shall provide educational materials explaining the requirements of the regulations as well as the employer's policies regarding alcohol misuse and controlled substances abuse. At a minimum, detailed discussions should include:

- The identity of the person designated to answer drug and alcohol questions
- Which drivers are subject to these requirements, what behavior is prohibited, and a clarification of what a "safety sensitive function" is
- The circumstances under which a driver will be tested, and the procedures that will be used for testing
- Explanations of the requirement that a driver submit to the testing, as well as what constitutes a driver's refusal to submit to testing
- The consequences for drivers who have violated the testing requirements
- Information concerning the effects of alcohol misuse, and controlled substances abuse on health, work, and personal life

## **Supervisor Training**

Each employer shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under Section 382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required. (382.603)

## **Company Policy**

For employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances, see Section 382.601.

## **Inquiries to Previous Employers**

A motor carrier, with the driver's written authorization, shall inquire about the following information on a driver from the driver's previous employers for a period of two years preceding the driver's date of application. Section 40.25(b)

If you are an employer from whom information is requested under 40.25(b), you must, after reviewing the employee's specific, written consent, immediately release the requested information to the employer making the inquiry. Section 40.25(h):

- Alcohol tests with a result of 0.04 alcohol concentration or greater
- Verified positive controlled substances test results and
- Refusals to be tested
- Other violations of DOT agency drug and alcohol testing regulations
- With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee.

## **Consortium Information**

MoDOT Motor Carrier Services Division does not endorse any consortiums. You are reminded that your company is responsible for drug and alcohol testing compliance. Evaluate carefully any company retained to provide consortium or laboratory testing services. Some companies provide more limited services. Be sure that the company selected provides all the services you need to ensure full compliance with the regulations.

To locate a consortium, you may contact one of the many associations dealing with the commercial motor vehicle industry, a hospital, or a clinic to provide you with the name of a consortium.

A Website that may be beneficial as a resource for one of the many associations is [www.dot.gov](http://www.dot.gov), go to Safety, Drug and Alcohol Safety.

## PART 382 DEFINITIONS

### Subject: 382.107 Definitions

**"Refusal to submit (to an alcohol or controlled substance test)"** - a driver (1) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing, (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing, or (3) engages in conduct that clearly obstructs the testing process.

**"Safety-sensitive function"** - any of those on-duty functions set forth in 395.2 On-Duty Time, paragraphs (1) through (6) as listed below:

- 1) All time at a carrier or shipper plant, terminal, facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the employer.
- 2) All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSR's), or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
- 3) All time spent at the driving controls of a commercial motor vehicle.
- 4) All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth).
- 5) All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.
- 6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

#### SAMPLE POLICY STATEMENT

This company is dedicated to providing safe and efficient service to our customers. Our employees are our most valuable resource in ensuring the quality of this service. The goal of this company is, therefore, to provide our employees with a workplace environment, which promotes health and safety.

In order to meet this goal, we hereby endorse the Federal Highway Administration's anti-drug and anti-alcohol policies and regulations. This company will not tolerate unauthorized use, abuse, possession or sale of controlled substances by its employees. Drug testing will be an integral part of our program. We will provide training, education and other assistance to our employees to help them understand their responsibilities in achieving a drug-free environment.

Non-compliance with this policy or violation of the regulations may result in severe disciplinary action including suspension or dismissal.

**AUTHORIZATION FOR PAST DRUG AND  
ALCOHOL TEST RESULTS**

I understand that, under Federal law, it is a condition of qualification with \_\_\_\_\_, that I provide written authorization to obtain the results of all Department of Transportation (DOT) required drug and alcohol tests (including refusals to get tested) from all companies for which I provided services as a driver during the last two years, whether as an employee or independent contractor or as an employee or contractor of an agent of the company, or for which I took a pre-employment or pre-qualification drug test during the past two years and name(s) and addresses of any Substance Abuse Professional (SAP) under which I obtained treatment or counseling during the past five years.

The company listed below is one for which I provided services as a driver or to which I applied as a driver during the last two years. I authorize \_\_\_\_\_ to obtain from this company and I authorize this company to furnish to \_\_\_\_\_

\_\_\_\_\_ the following information on my drug and/or alcohol tests (including any information the company obtained from a previous employer for whom I provided services as a driver or to which I applied for a driving position) during the last two years: (1) all positive drug test results; (2) all adulterated or substituted a test specimen for controlled substance results; (3) all alcohol tests results of 0.04 or greater; (4) all alcohol test results or 0.02 or greater but less than 0.04; (5) all instances in which I refused to submit to a DOT-required drug and/or alcohol test.

1. Has this person committed other violations of Subpart B of Part 382, or Part 40? Yes ☐ No ☐
2. If this person has violated a DOT drug and alcohol regulation, did this person complete a SAP-prescribed rehabilitation program in your employ, including return-to-duty and follow-up tests? If yes, please send documentation back with this form. Yes ☐ No ☐
3. For a driver who successfully completed a SAP's rehabilitation referral and remained in your employ, did this driver subsequently have an alcohol test result of 0.04 or greater, a verified positive drug test, or refuse to be tested? Yes ☐ No ☐

In answering these questions, include any required DOT drug and alcohol testing information obtained from prior previous employers in the previous 3 years prior to the application date.

Name: \_\_\_\_\_ Company: \_\_\_\_\_

Street: \_\_\_\_\_ City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Dates Worked For/Applied To: \_\_\_\_\_

Completed by: \_\_\_\_\_

Signature/Title

Date

I have carefully read and fully understand this authorization. I certify that all of the information that I have furnished is true and complete and that the company listed is one that I have provided services for as a driver or applied for work or qualification as a driver during the past two years.

Signature of Applicant

Date

## OBSERVED BEHAVIOR - REASONABLE CAUSE RECORD

Employee: Name: _____			
Identification Number: _____			
Observation Date: _____			
Location: _____			
(STREET)	(CITY)	(STATE)	(ZIP)

### CAUSE FOR SUSPICION

1) Presence of Drugs and/or Drug Paraphernalia (specify): \_\_\_\_\_

2) Appearance: ☐ Normal ☐ Flushed ☐ Puncture Marks

☐ Disheveled ☐ Bloodshot Eyes ☐ Profuse Sweating

☐ Dry-mouth Symptoms ☐ Runny Nose/Sores ☐ Tremors

☐ Dilated/Constricted Pupils ☐ Inappropriate wearing of sunglasses

☐ Other \_\_\_\_\_

3) Behavior/  
Speech ☐ Normal ☐ Incoherent ☐ Slurred ☐ Silent

☐ Confused ☐ Slowed ☐ Whispering

☐ Other \_\_\_\_\_

Awareness: ☐ Normal ☐ Confused ☐ Mood Swings ☐ Euphoria

☐ Lethargic ☐ Paranoid ☐ Disoriented

☐ Lack of Coordination

☐ Other \_\_\_\_\_

4) Motor Skills  
Balance: ☐ Normal ☐ Swaying ☐ Falling ☐ Staggering

☐ Other \_\_\_\_\_

Walking &  
Turning: ☐ Normal ☐ Swaying ☐ Arms Raised for Balance

☐ Stumbling ☐ Falling ☐ Reaching for Support

☐ Other \_\_\_\_\_

5) Other Observed Actions or Behavior (specify): \_\_\_\_\_

Witnessed by:

\_\_\_\_\_  
(SIGNATURE) (TITLE) (DATE) (TIME) am/pm

\_\_\_\_\_  
(SIGNATURE) (TITLE) (DATE) (TIME) am/pm

This document must be prepared and signed by the witnesses within 24 hours of the observed behavior or before the results of the test are released, whichever is earlier (49 CFR 391.99(d)).